

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELMER RENE HERNANDEZ,

Defendant.

8:21-CR-175

ORDER

On April 19, 2023, this Court sentenced Elmer Rene Hernandez to a term of 210 months' imprisonment following his conviction for conspiracy to distribute and possess with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine. [Filing 1 at 1](#); [Filing 134 at 1-2](#). Consistent with his plea agreement, Hernandez did not file a direct appeal with the United States Court of Appeals for the Eighth Circuit. *See Filing 106 at 4*. However, Hernandez subsequently filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to [28 U.S.C. § 2255](#) in this Court. [Filing 152](#).

Although the Court received this § 2255 Motion on April 22, 2024, Hernandez declared under penalty of perjury that he placed his Motion in the prison mailing system on April 17, 2024. [Filing 152 at 12](#). The Court did not enter its Judgment in Hernandez's case until April 20, 2023; therefore, his § 2255 Motion was timely filed when applying the prison mailbox rule. *See Rule 3(d) of the Rules Governing Section 2255 Proceedings in the United States District Courts ("A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing")*. Along with his § 2255 Motion, Hernandez also filed a Motion seeking an additional 45 days to file a supporting memorandum. [Filing 153](#). Hernandez contends that his § 2255 Motion asserts "complex issues" that require significant

research and he “would have no objection to the Court not conducting the preliminary review required by Rule 4 of the Rules Governing 28 U.S.C. § 2255 Proceedings and/or not requiring the United States to file an Answer . . . until the Memorandum [is] filed[.]” [Filing 153 at 2](#).

Because Hernandez is proceeding *pro se*, his § 2255 Motion was timely filed, and he articulates two specific grounds for relief in his § 2255 Motion, *see* [Filing 152 at 4–6](#), the Court will permit him to provide a supplemental memorandum in support of his § 2255 Motion.¹ The Court will also grant Hernandez the 45 days he requests in order to submit this Memorandum. *See* [Filing 153](#). Consistent with Hernandez’s express acquiescence, the Court will defer its review under Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts until after it has received Hernandez’s Memorandum or the deadline for submitting the Memorandum expires, whichever comes first. The Court will then decide whether it is appropriate to order the United States to respond to any or all of Hernandez’s grounds for relief. Accordingly,

IT IS ORDERED: Hernandez’s Motion for an Extension of Time, [Filing 153](#), is granted. Hernandez shall have forty-five (45) days from the date of this Order to file a Memorandum in Support of his [28 U.S.C. § 2255](#) Motion.

Dated this 23rd day of April, 2024.

BY THE COURT:



Brian C. Buescher
United States District Judge

¹ The Court concludes that this course of action is appropriate because Hernandez filed his § 2255 Motion using the template AO 243 document, and this form specifically instructs *pro se* petitioners to “not argue or cite law” in reciting the factual basis supporting their claim. *See* [Filing 152 at 4](#). Allowing Hernandez to provide a supplemental memorandum articulating the legal bases for the claims he asserts in his § 2255 Motion will better inform the Court’s Rule 4 analysis.